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**MAILED**

**MAY 20 2010**

**OFFICE OF PETITIONS**

In re Patent No. 7,536,346	:	
ALIFFI et al.	:	ON REQUEST FOR
Issue Date: May 19, 2009	:	RECONSIDERATION
Application No. 10/021,468	:	OF PATENT TERM ADJUSTMENT
Filed: October 29, 2001	:	UNDER 37 CFR 1.705(d)
Atty. Docket No. E0019/258247	:	

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION" filed January 29, 2010.

The request for reconsideration of patent term adjustment is **DISMISSED** as untimely.

On May 19, 2009, the above-identified application matured into U.S. Patent No. 7,536,346, with a revised patent term adjustment of 795 days. On June 25, 2009, patentees timely submitted a request for reconsideration of patent term adjustment within two months of the issue date of the patent. See 37 CFR 1.705(d). On July 20, 2009, the Office mailed a decision dismissing the petition under 37 CFR 1.705(d).

Pursuant to 37 CFR 1.181(f), a request for reconsideration of the decision of July 20, 2009, dismissing the petition under 37 CFR 1.705(d) must have been filed within two months of the mailing date of that decision (i.e. on or before September 20, 2009). Extensions of time under 37 CFR 1.136 were not permitted. No request for reconsideration of the patent term adjustment was filed within two months of mailing date of the decision of July 20, 2009. Instead, patentees filed the present request for reconsideration of patent term adjustment on January 29, 2010, more than six months from the mailing date of the

decision of July 20, 2009. Patentees reference the decision in Wyeth v. Kappos, 591 F.3d 1364 (Fed. Cir. 2010) as the basis for the petition.

The fact that any relief ultimately granted in Wyeth may benefit patentees had they timely filed a request for reconsideration does not make the situation extraordinary. Wyeth followed the procedure set forth in 37 CFR 1.705 for requesting reconsideration of the patent term adjustment determination. Then, pursuant to 35 U.S.C. 154(b)(4)(A), Wyeth timely filed a complaint in District Court seeking judicial review of the Office's decision.

The fact that the Federal Circuit affirmed the order by the District Court for the District of Columbia granting summary judgment in favor of Wyeth does not make the situation extraordinary. This is not unlike any other situation where a patentee (or applicant) challenges a final agency decision and the decision upon judicial review could have had applicability to another patentee (or applicant) had they taken such action. The contention that a decision is in error is a basis for a timely request for review of the decision but does not justify a delay in seeking review of such decision. If patentees were dissatisfied with the decision dismissing the petition under 1.705(d), patentees should have filed a request for reconsideration of patent term adjustment within two months of the mailing date of that decision pursuant to 37 CFR 1.181(f). Moreover, patentees could have filed a civil action against the Director in the United States District Court for the District of Columbia within 180 days after the grant of the patent. See 35 USC 154(b)(4)(A).

Therefore, as patentees did not file the present request for reconsideration of patent term within two months of the mailing date of the decision dismissing the petition under 37 CFR 1.705(d), the request is properly dismissed as untimely filed.

Telephone inquiries specific to this matter should be directed the undersigned at (571) 272-3211.

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